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10/781,395

02/18/2004

John H. Gillen

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MARSHALL & MELHORN, LLC  
FOUR SEAGATE - EIGHTH FLOOR  
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EXAMINER

REDMAN, JERRY E

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/781,395  
Filing Date: February 18, 2004  
Appellant(s): GILLEN, JOHN H.

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Stephen G. Kimmet  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/9/2009 appealing from the Office action mailed 10/9/2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,207,911	Hirsch et al.	3-2001
6,324,788	Koneval et al.	12-2001
6,435,636	MacMillan	8-2002

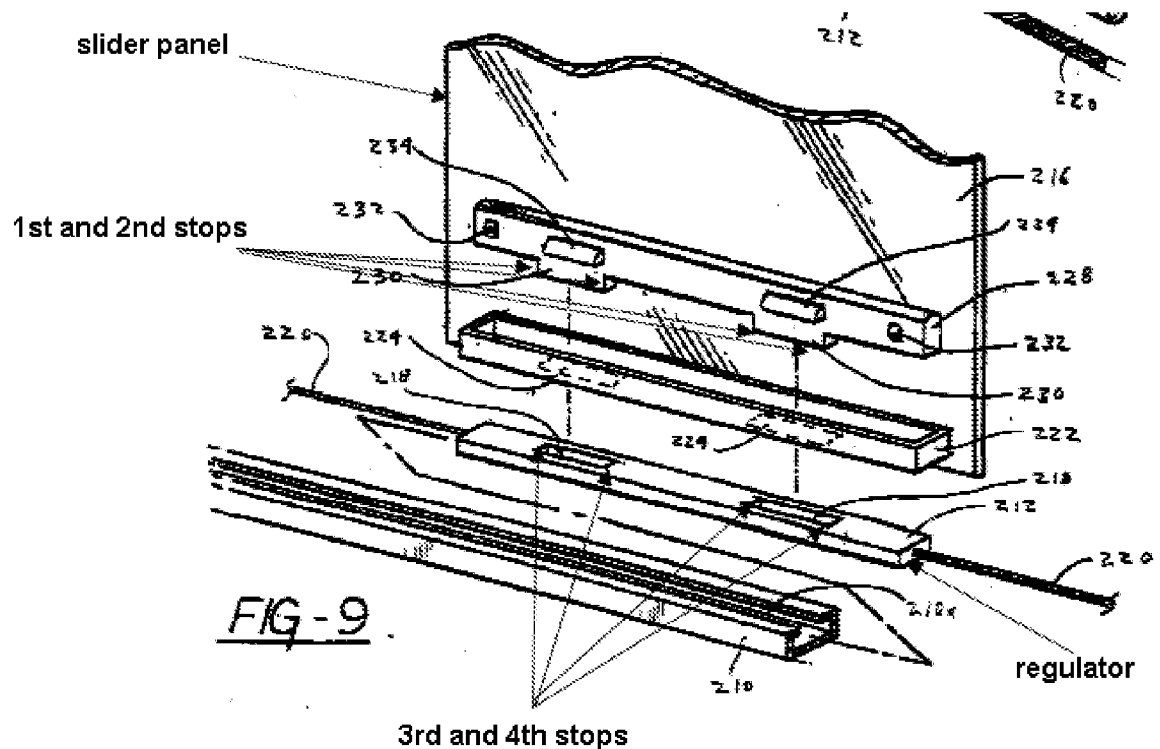
**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 6-8, 12, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Koneval et al., (6,324,788 B1). As shown in Figure 9 below, Koneval et al. (6,324,788 B1) disclose a powered slider drive interface for opening and closing a vehicle slider panel (216) across a window aperture of a back-lite of a vehicle (see figure 1 for the vehicle and back-lite) comprising a slider panel (216), a regulator/driver bracket (212), at least first, second, third, and fourth mechanical stops mounted on the slider panel (216) and the regulator (212), slider/guide tracks (210/18, column 3, line 41) positioned above and below the slider panel (216), a cable (220) mounted on each end of the regulator/driver bracket (212) such that as the electric reversible motor (24) drives the cable (220) to and fro, the stops are brought into mechanical contact with one another to thereby move the sliding panel (216) across the opening/aperture of a vehicle back-lite. Koneval et al. (6,324,788 B1) further discloses the slider panel (216)

Art Unit: 3634

has being removable and therefore there has to be some "space" between the stops (shown below) from the projections (230) and the mounting slots (218) (as shown below, column 6, lines 24-48).



Claims 3-5, 9-11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koneval et al., (6,324,788 B1) in view of MacMillan (6,435,636 B1) and Hirsch et al United States Patent number 6207911. All of the elements of the instant invention are discussed in detail above except providing a EDPM plastic bumper. MacMillan (6,435,636 B1) discloses a plastic bumper combination thereof. And Hirsch et al United States Patent number 6207911 teaches that EPDM is a durable

Art Unit: 3634

and energy absorbing bumper material, suitable for use in automobiles.

15 Preferably, the bumper body is formed of a flexibly resilient and semi-rigid material appropriate for the door-stopping function thereof, such as, e.g., rubber or a suitable elastomer. A preferred material for the bumper body is an EPDM (ethylene propylene diene monomer) elastomer.

The bumper body 16 is formed of a resilient yet semi-rigid material, which may be rubber or a durable elastomer. A 60 preferred material for the bumper body is an EPDM (ethylene propylene diene monomer) elastomer. The bumper body 16 is of a strength and thickness sufficient to make it durable enough to serve as a door stop, or energy absorbing damper, when in place in a vehicle. 65

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Koneval et al., ('788) with a plastic bumper as taught by MacMillan (6,435,636 B1) and Hirsch et al United States Patent number 6207911 since an EPDM bumper allows a smooth transition between starting and stopping of an element which is slide in a track.

### **(10) Response to Argument**

The appellant's arguments have been considered but are not deemed persuasive. The appellant argues that as the claims are currently amended, a "space" is provided between the stops during sliding movement. Since the prior art panel is taught to be engaged and disengaged (elements 230 and 218) from one another, the examiner maintains that a space is necessarily provided between the projections and

Art Unit: 3634

the slots, which enables the panel to be disengaged. If there were no space, the elements could not fit together such that the device of the prior art would work for its intended purpose.

As set forth in the final office action (page 5, October 9, 2008), "*Space* is defined as "the unlimited or incalculably great three-dimensional realm or expanse in which all material objects are located and all events occur" ([www.dictionary.com](http://www.dictionary.com)). Therefore, broadly recited, there is "space" between elements 230 and 218 when in the engaged position. Otherwise, the elements (230 and 218) could not be easily engaged and/or disengaged.

Furthermore, as the applicant has maintained and disclosed throughout prosecution, Figures 1 and 2A disclose the appellant's invention, yet the appellant fails to show this criticality (i.e., space) of play between the stops/contact surfaces. Yet still furthermore, if this "space" is the entire reason of novelty, then why hasn't the appellant's specification quantified the "space" and/or at least quantified within a given range?

In conclusion, the appellant's entire argument is based on Koneval et al. ('788) not having a space between contact surfaces and stops, yet the appellant has not defined this "space" clearly enough to either specifically quantify the "space" or show the "space" in Figures 1 and 2A. Koneval et al. ('788) does have space between the contact surface(s) and the stop surface(s) and therefore the claims read on the art of record.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jerry Redman

/Jerry Redman/  
Primary Examiner, Art Unit 3634

Conferees:

Ms. Katherine Mitchell /km/

Ms. Darnell Jayne /dj/